

IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF UTAH

REMY BUBBA KUSH,

Plaintiff,

v.

WILLIAM HENRY GATES III, et al.,

Defendants.

**ORDER ADOPTING REPORT AND
RECOMMENDATION**

Case No. 2:23-cv-00457-JNP-DBP

Judge Jill N. Parrish

Magistrate Judge Dustin B. Pead issued a Report and Recommendation that the court dismiss the plaintiff's action with prejudice.¹ Judge Pead notified the parties that a failure to file a timely objection to the recommendation could waive any objections to it. No objection was filed within the allotted time.

Because no party objected to the Report and Recommendation, any argument that it was in error has been waived. *See United States v. One Parcel of Real Prop.*, 73 F.3d 1057, 1060 (10th Cir. 1996). The court will decline to apply the waiver rule only if "the interests of justice so dictate." *Moore v. United States*, 950 F.2d 656, 659 (10th Cir. 1991). In determining whether the interests of justice require an exception to the waiver rule, the Tenth Circuit has "considered factors such as 'a *pro se* litigant's effort to comply, the force and plausibility of the explanation for his failure to comply, and the importance of the issues raised.'" *Duffield v. Jackson*, 545 F.3d 1234,

¹ On page 2 of the Report and Recommendation, Judge Pead indicates that his recommendation is to dismiss without prejudice. Given the specific analysis regarding dismissal with prejudice found later in the Report and Recommendation, the court finds that the language on page 2 is a typo.

1238 (10th Cir. 2008). In this case, there is no indication that the interests of justice require it to deviate from the waiver rule. Thus, the court finds that all objections are waived and ADOPTS IN FULL the Report and Recommendation.

Accordingly, the court ORDERS as follows:

1. The Report and Recommendation, ECF No. 10, is ADOPTED IN FULL.
2. The court DISMISSES this action with prejudice.

DATED October 20, 2023.

BY THE COURT:

A handwritten signature in purple ink, reading "Jill N. Parrish", is written over a horizontal line.

JILL N. PARRISH
United States District Judge